

APPEAL NO. 031200
FILED JULY 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 15, 2003. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) sustained a compensable injury in the form of an occupational disease with a date of injury of _____, and that the respondent/cross-appellant (carrier) has waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022. The claimant appealed the Finding of Fact that he did not sustain an injury in the form of hepatitis C on _____, while in the course and scope of employment. The carrier responded, urging affirmance of this finding and noting that hepatitis C was a compensable injury due to the hearing officer's determination that the carrier waived its right to contest the compensability of the claimed injury. The carrier also filed an appeal, disputing the determinations that the carrier waived its right to contest compensability and that the claimant did sustain a compensable injury in the form of an occupational disease with a date of injury of _____. The appeal file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The claimant testified that his right arm was scratched on _____, from something contained in the medical waste bag that he was picking up in the course and scope of his employment. He testified that the scratch caused his arm to bleed but that he did not receive any medical attention. The evidence reflects that the claimant was diagnosed with hepatitis C on or about February 21, 2002. As the carrier correctly notes in its appeal, the hearing officer's finding of fact incorrectly lists the date as February 21, 2003. We reform Finding of Fact No. 3 to conform to the evidence and read as follows: The claimant was diagnosed with hepatitis C on or about February 21, 2002.

The claimant disputes the finding that he did not sustain an injury in the form of hepatitis C on _____, while in the course and scope of employment. The hearing officer noted that while the facts strongly support a possibility that the incident of _____, may have infected the claimant with hepatitis C, none of the doctors could state this within a reasonable medical probability. The hearing officer was persuaded that based on the evidence as a whole, the claimant failed to prove by a preponderance of the evidence that hepatitis C is a result of the incident of _____. There is sufficient evidence to support this finding.

However, Section 409.021(a) requires that a carrier dispute compensability within 7 days of first receiving written notice of an injury or waive its right to dispute

compensability. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002). The finding that the carrier received its first written notice of the claimed injury on July 2, 2001 was not appealed. Further, the carrier does not dispute that on March 8, 2002, the carrier filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). The carrier argues the dispute is timely because it was not until March 4, 2002, that the employer first notified the carrier that the claimant felt hepatitis C was an occupational disease related to the scratch incident. However, there was no newly discovered evidence regarding the injury itself (the scratch). The carrier argues that there was no action for them to take within 7 days of the date the carrier received written notification of the claimant being scratched because the claimant required no medical treatment and had not lost any time from work. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, we focused on language in the Texas Supreme Court's decision in the Downs, *supra*, case and determined that the carrier is required to take some action within 7 days of receiving written notice of the injury in order to be entitled to the 60-day period to investigate a claim and deny compensability. It cannot simply sit back and rely on the fact that benefits did not accrue prior to the date it filed its dispute to argue that it did not waive its right to contest. In this instance, there is no evidence in the record that the carrier "took some action" within the 7-day period indicating that it had accepted the claim or intended to pay benefits; thus, the hearing officer did not err in determining that the carrier waived its right to dispute compensability of the claimed injury.

We affirm the decision and order as reformed.

The true corporate name of the insurance carrier is **FIRE AND CASUALTY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge